Local 250, Hospital and Institutional Workers Union, SEIU, AFL–CIO *and* Shoreline South Intermediate Care, Inc., a wholly-owned subsidiary of Inland Pacific Health Care. Case 32–CP–320

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On March 7, 1986, Administrative Law Judge David G. Heilbrun issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge dismissed allegations that the Respondent, Local 250, Hospital and Institutional Workers Union, SEIU, AFL–CIO, violated Section 8(b)(7)(C) of the Act by picketing the Employer, Shoreline, from early November 1984 until October 31, 1985, without filing a representation petition.[1] For the reasons discussed below, we reverse the judge's conclusion and find that the Respondent's actions violated the Act, as alleged.

The facts, as more fully set forth in the judge's decision, are not in dispute. Shoreline operates a nursing home. The Respondent and Shoreline's predecessor had an established bargaining relationship. In late 1984, Shoreline bought and took over operation of the nursing home. Shoreline hired only a small part of the predecessor's work force and announced that it planned to operate on a nonunion basis. In early November 1984, the Respondent began picketing the facility and, on November 26, 1984, filed unfair labor practices charges against Shoreline (in Case 32–CA–6921) alleging violations of Section 8(a)(5), (3), and (1).[2] The picket signs read, ''On Strike,'' ''Shoreline South Unfair,'' ''Unity at Work,'' ''Unfair Labor Practices,'' and ''Call Jack Easterday.''[3] The General Counsel found merit in the charges and issued complaint on January 17, 1985,[4] and a hearing was held thereafter. The judge dismissed all complaint allegations and, following an appeal of that decision, the Board affirmed the judge and dismissed the complaint on September 30.[5] Picketing continued throughout the entire period of these 8(a)(5) proceedings and into November.

On October 21, the Respondent's business agent, Smith, visited the office of Shoreline's parent company in an effort to meet with Chairman Easterday. Upon learning that Easterday was not in, Smith left behind some flyers announcing a November 16 rally to protest Shoreline's failure to employ all employees who had worked for the previous employer. Smith also left a message for Easterday, warning that if he refused to talk with him there would be pickets at both his home and his office. The next day Smith again went to Easterday's office and delivered a letter alluding to possible escalation of the situation and requesting that Easterday contact him. Easterday telephoned the Respondent and set up a meeting for November 1. Shoreline filed the instant unfair labor practice charges on October 23. On October 31, the same day that complaint issued on Shoreline's charges, the Respondent filed a petition for an election to represent Shoreline's employees. At the November 1 meeting, Smith told Easterday that he wanted all the former employees rehired. Smith did not deny that the Respondent was seeking recognition as bargaining representative. On November 12, the district court issued a temporary injunction under Section 10(l) of the Act, enjoining the Respondent from picketing. On November 16, the rally took place as scheduled. Some of the more than 70 participants carried signs protesting Shoreline's ''mass firings'' and ''union busting.'' Smith delivered a speech stating his intent to negotiate with Easterday. Following an 8-day hiatus after the rally, picketing resumed on November 25. At that time, messages on the signs included, ''Protest Mass Firing Shoreline South Workers, Local 250 SEIU,'' ''Union Busting is for the Birds,'' and ''Scabbing Has No Future.''

The judge concluded that the Respondent's picketing lacked sufficient evidence of a recognitional objective necessary for a finding of violation of Section 8(b)(7)(C). He reasoned that when the picketing began, it was to protest Shoreline's failure to acknowledge its bargaining obligations as a successor employer. He cited the Respondent's filing unfair labor practice charges, alleging, inter alia, that Shoreline was breaching an existing duty to recognize and bargain with it,

[1] Sec. 8(b)(7)(C) reads as follows:

(b) . . . It shall be an unfair labor practice for a labor organization or its agents—

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective-bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(C) where such picketing has been conducted without a petition under section 9(c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing. . . .

[2] The Respondent filed an amended charge on December 20, 1984, and a second amended charge on January 14, 1985. Both of these amended charges also contained allegations of 8(a)(5), (3), and (1) violations.

[3] Easterday is the chairman of Inland Pacific Health Care, Shoreline's parent company.

[4] Dates hereafter refer to 1985 unless otherwise noted.

[5] 276 NLRB 913.

as evidence of the Respondent's position and reasoned that the picketing was merely in furtherance of that position. He determined that the picketing maintained its legitimate collateral nature throughout the pendency of the complaint and until the Board's final ruling on the merits of the allegations. He found that the Respondent changed its tactics and engaged in recognitional-type activities only after the Board's September 30 dismissal of the 8(a)(5) complaint, noting that it was not until October that the Respondent attempted to make personal contact with Easterday and expressed representational objectives in leaflets and other written materials. The judge further concluded that the Respondent's October 31 representation petition was timely under Section 8(b)(7)(C) because it was within 30 days of when the Respondent had likely received notice of the Board's September 30 complaint dismissal. Accordingly, he dismissed the complaint.

The General Counsel maintains that the Respondent's recognitional objectives were apparent from the November 1984 outset of picketing, and that its failure to file an election petition within 30 days from that time establishes a violation of Section 8(b)(7)(C). Citing *Retail Clerks Local 1557 (Giant Foods)*, 217 NLRB 4 (1975); and *Teamsters Local 703 (People Pleasing of Chicago)*, 238 NLRB 532 (1978), the General Counsel contends that a union's efforts to enforce alleged successor bargaining obligations by filing an 8(a)(5) charge itself evidences a recognitional objective and, therefore, cannot immunize supportive picketing beyond the time limits set forth in the Act. The General Counsel asserts that the Respondent's acknowledged goal of having all former unit employees reinstated—thereby restoring the Union to its majority and representational status—further supports a finding of recognitional intent. Finally, the General Counsel argues, even accepting the judge's premise that the Respondent's obligation to file a representation petition was suspended during the pendency of the unfair labor practice proceedings, once the Board determined that the allegations were without merit and dismissed the complaint, the Respondent was required to act within 30 days of the resolution of the issue—in this case by October 30—to comply with the statute.

While we agree with the General Counsel that the Respondent violated Section 8(b)(7)(C), we do so only for the reasons explained below.

The Board's decision in *Hod Carriers Local 840 (Blinne Construction)*, 135 NLRB 1153 (1962), provides guidance. In that case, the respondent-union claimed that the employer's unfair labor practices served as a defense to its failure to file a representation petition within 30 days of the start of recognitional picketing.[6] The union asserted that the employer's various unfair labor practices[7] deprived both the union and the employees it sought to represent of their Section 7 rights. It argued essentially that it would be unfair to be required to proceed through the election process in circumstances marred by the employer's coercive misconduct.

After examining the statutory language and reviewing the legislative history of Section 8(b)(7)(C), the Board rejected the union's position. The Board first noted that there is no statutory exemption from the 30-day filing requirement for situations in which a picketing union alleges employer unfair labor practices. Secondly, it observed that the Board ensures against the possibility of unlawful employer advantage and can maintain a coercion-free election environment simply by holding in abeyance any petitions filed during the pendency of unfair labor practice charges until the issue of unlawful conduct is resolved. If, following investigation, it is determined that the charges are not meritorious, the Region can promptly process the petition and the question concerning representation underlying the picketing can be resolved.

The Board noted, however, that different considerations are presented when 8(a)(5) charges are involved. An 8(a)(5) charge which is found meritorious so as to warrant issuance of complaint, presupposes that no question concerning representation exists and that the employer is wrongfully disregarding its bargaining obligations. In such a case, the Board will not entertain a representation petition, but will instead dismiss any pending petitions on file. The Board explained:

> [A] meritorious 8(a)(5) charge moots the question concerning representation which the petition is designed to resolve; other 8(a) charges merely delay the time when that unresolved question can be submitted to a free election by the employees . . . . [A]n 8(a)(5) charge, found meritorious after investigation dictates a dismissal of a pending representation petition, and . . . to require the union to file a petition in such circumstances is to require the union to perform a futile act.[8]

The Board concluded that because the union's 8(a)(5) charges had been found without merit and dismissed by the Regional Director, and only the 8(a)(3) and (1) allegations were found meritorious, the respondent violated Section 8(b)(7)(C) by failing to file

[6] It was undisputed that an object of the picketing was for recognition. The union was also, however, protesting the employer's discriminatory transfer of an employee and its payment of wages at a lower rate than prescribed by law.

[7] Approximately 3 weeks after the start of picketing, the union filed charges alleging violations of Sec. 8(a)(5), (3), (2), and (1). Twenty-one days later, the Regional Director dismissed the 8(a)(5) and (2) charges, whereupon the union filed a representation petition. About a month later, the Regional Director approved a settlement agreement with the employer concerning the 8(a)(3) and (1) charges; in the agreement the employer neither admitted nor denied committing the unfair labor practice.

[8] 135 NLRB at 1166–1167 fn. 24.

a representation petition within 30 days of the commencement of picketing.

The instant case involves precisely the situation described above in *Blinne*. As noted, the Respondent in Case 32–CA–6921 filed 8(a)(5) charges that were found, after investigation, meritorious, that is, sufficiently well grounded to warrant the issuance of a complaint. The matter proceeded to hearing and, thereafter, the judge recommended dismissal of the complaint. The General Counsel pursued the issue of the merits of the allegations by appealing to the Board. Only upon the Board's issuance of its Decision and Order dismissing complaint was the Respondent's refusal to bargain charge finally determined to be nonmeritorious. As noted above, had the Respondent attempted to file a representation petition during the pendency of the unfair labor practice proceeding it would have been dismissed. Accordingly, we find that the Respondent was justified in relying on the viability of its 8(a)(5) charges and in not attempting to file a representation petition pending the Board's ruling. On September 30, however, when the Board rendered a final determination on the merits of the 8(a)(5) allegations, all issues regarding the Employer's bargaining obligations were resolved against the Respondent's position. With that determination by the Board, the Union's continued picketing could no longer be characterized as having a purpose other than recognition. At that point, and not at some later date when the Respondent may have been notified of the Board's decision, the operative language of Section 8(b)(7)(C), providing for a ''reasonable period of time not to exceed 30 days'' in which to file a petition, began to run. A more expansive interpretation is not only contrary to the express language of the statute, but also lacks support in precedent. In *Teamsters Local 239 (Stan-Jay Auto Parts)*,[9] a case decided not long after Section 8(b)(7)(C) became part of the Act, the Board stated that while the statute does not define a ''reasonable period of time,'' it places an ''outside limit'' on such a period. Although the facts and circumstances of a particular case may warrant a finding that a union must act in less time, 30 days is this outside limit.

In *Stan-Jay*, the Board held that 17 days was beyond the ''reasonable period of time not to exceed 30 days'' by which the union should have filed a petition. In that case, the union's recognitional or organizational picketing started nearly 2 months before Section 8(b)(7)(C) became law and continued for 17 days after its effective date. The total length of time during which picketing took place exceeded 60 days—more than twice the statutory outside limit. In deciding what constituted a reasonable period, the Board took into account that the union had already been picketing for more than a month when the terms of Section 8(b)(7)(C) took effect. In such circumstances, the Board deemed it contrary to the intent of the statute to permit the union 30 more days to continue its picketing without filing a petition.

Thus, *Stan-Jay* stands, inter alia, for the following propositions: 1. that the Board will factor all periods of continuous recognitional picketing into its equation for determining the reasonable period of time under Section 8(b)(7)(C); and, 2. that the Board will not delay the measurement of the reasonableness of that period for even 1 day in the event the total period of recognitional picketing is extensive, i.e., in excess of 30 days, once any legitimate defense to finding a violation by such picketing no longer exists.

Applying these propositions to the instant case, we find it appropriate to consider that the Respondent had been picketing the Employer's premises almost continuously for more than 10 months by the time the Board issued its decision dismissing the 8(a)(5) allegations in Case 32–CA–6921, a decision that deprived the Respondent of any basis for its contention that its picketing was for a purpose beyond the reach of Section 8(b)(7)(C). Given the extended period of time that the Respondent had already picketed the Employer, it is neither burdensome upon the Union nor restrictive of its rights to require it to act with some diligence in responding to the Board's finding. Accordingly, we are not persuaded that the ''reasonable period of time not to exceed 30 days'' should be extended by some additional period to permit the Respondent to receive actual notice, but rather find it in keeping with the purposes of the Act to begin to calculate this period immediately upon the issuance of the Board's decision adopting the dismissal of the 8(a)(5) allegations. Because that decision issued on September 30 and the Respondent did not file its petition until October 31, the petition was filed 1 day beyond the statutory ''outside limits'' of 30 days.[10] Accordingly, in failing timely to file its petition, the Respondent violated Section 8(b)(7)(C) of the Act.[11]

CONCLUSIONS OF LAW

1. Shoreline South Intermediate Care, Inc., a wholly-owned subsidiary of Inland Pacific Health Care, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[9] 127 NLRB 958 (1960).

[10] Thus, we find it unnecessary to decide whether some period of time less than 30 days after the decision may have been reasonable for the Respondent to have filed its petition.

[11] We note further that under *Giant Foods*, supra, had the General Counsel not found merit in the Respondent's 8(a)(5) charge, i.e., issued complaint, in January 1985, the Respondent, by having picketed for more than 30 days without filing a petition, held itself open to a finding of violation of Sec. 8(b)(7)(C) based on the date of its initial picketing in November 1984. In view of the facts of this case and our disposition of the issues here presented, however, we find it unnecessary to address the further question of whether the Respondent could have been found in violation of the Act by failing to file a petition *after* the first 30 days of picketing in 1984, but *prior* to the General Counsel's finding of merit in its 8(a)(5) charges and issuance of complaint.

2. The Respondent, Local 250, Hospital and Institutional Workers Union, SEIU, AFL–CIO, is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent, by picketing the Employer's facility in Alameda, California, for more than 30 days without having filed a petition under Section 9(c) of the Act, where an object of that picketing was to force or require the Employer to recognize and bargain with the Respondent as the collective-bargaining representative of its employees, has engaged in unfair labor practices within the meaning of Section 8(b)(7)(C) of the Act.

REMEDY

Having found that the Respondent has engaged in this unfair labor practice, it is necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.[12]

ORDER

The National Labor Relations Board orders that the Respondent, Local 250, Hospital and Institutional Workers Union, SEIU, AFL–CIO, Alameda, California, its officers, agents, and representatives, shall

1. Cease and desist from picketing or causing to be picketed, or threatening to picket or cause to be picketed, Shoreline South Intermediate Care, Inc., with an object of forcing or requiring Shoreline to recognize the Respondent as the collective-bargaining representative of Shoreline's employees, at a time when the Respondent is not certified as such representative, and where such picketing has been conducted without a petition under Section 9(c) being filed within a reasonable period of time not to exceed 30 days from the commencement of such picketing.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at each of its offices and meeting halls copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Mail to the Regional Director for Region 32 signed copies of the notice for posting by Shoreline South Intermediate Care, Inc., if it is willing, in places where notices to its employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

MEMBER DEVANEY, dissenting.

I agree with my colleagues that under the Board's decision in *Hod Carriers Local 408 (Blinne Construction)*, 135 NLRB 1153 (1962), the Respondent was under no obligation to file a representation petition at any time prior to the Board's September 30, 1985 dismissal of the General Counsel's 8(a)(5) complaint.[1] I also agree that under Section 8(b)(7)(C) the Respondent was required to file a representation petition within a 30-day period after the Board's decision. Contrary to my colleagues, however, I would begin the 30-day period, like the judge, from the date the Respondent received notice of the Board's decision in the previous case, dismissing the 8(a)(5), (3), and (1) allegations filed by the Respondent against the Employer, nor from the date of the decision itself. Although the record does not indicate the date of receipt, the judge correctly assumed that it was ''early October,'' and thus the Respondent's October 31, 1985 filing of a representation petition was within the 30-day period. Accordingly, the requirements of Section 8(b)(7)(C) were satisfied, and I would adopt the judge's dismissal of the complaint.

Nothing in the Act nor its legislative history mandates the majority's finding that the 30-day period begin on the date of the issuance of the Board's decision. Nor does the Board's decision in *Teamsters Local 239 (Stan-Jay Auto Parts)*, 127 NLRB 958 (1960), relied on by the majority, support their conclusion that their finding is ''in keeping with the purposes of the Act.'' The issue in *Stan-Jay* was whether, under the facts of that case, the respondent was required to file a representation petition in less than 30 days after the enactment of Section 8(b)(7)(C) in light of its picketing prior to the enactment of that section, and the majority specifically does not decide the issue concerning the Respondent's prior picketing in this case.

Under these circumstances, and given the particular facts of this case, I find it logical and reasonable to begin the 30-day period from the Respondent's actual notice of the Board's decision. Once on notice of the decision, the Respondent can be held accountable for the resulting change in its obligations under the Act, which in this case required it to file a representation

[12] The General Counsel seeks, inter alia, a visitatorial clause authorizing the Board, for compliance purposes, to obtain discovery from the Respondent under the Federal Rules of Civil Procedure subject to the supervision of the United States court of appeals enforcing our Order. Under the circumstances of this case, we find it unnecessary to include such an order. See *Cherokee Marine Terminal*, 287 NLRB 1080 (1988).

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[1] In fact, had the Respondent filed a representation petition prior to September 30, 1985, it would have been dismissed. *Blinne*, supra at 1166 fn. 24.

petition within 30 days. But before actual notice, the Respondent had no reason to know, or even suspect, that such a change had occurred.

For these reasons, I would find that the Respondent's filing of a representation petition on October 31, 1985, satisfied its obligation under Section 8(b)(7)(C) of the Act. Accordingly, I respectfully dissent.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT picket, or cause to be picketed, or threaten to picket Shoreline South Intermediate Care, Inc., Alameda, California, where an object of that picketing is to force or require Shoreline South Intermediate Care, Inc., to recognize and bargain with us as the representative of its employees, at a time when we are not certified or recognized as the exclusive bargaining representative of its employees, and where such picketing has been conducted without a petition being filed under Section 9(c) of the Act within a reasonable period of time, not to exceed 30 days, from the commencement of such picketing.

LOCAL 250, HOSPITAL AND INSTITUTIONAL WORKERS UNION, SEIU, AFL–CIO

Barbara Koh and *Douglas Gallop*, for the General Counsel.
William A. Sokol, of San Francisco, California, for the Respondent.
James T. Winkler, of Cerritos, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was heard 16 December 1985 at Oakland, California. The charge was filed 23 October 1985 and the complaint issued 31 October 1985. The primary issue is whether Local 250, Hospital and Institutional Workers Union, SEIU, AFL–CIO (Respondent), a labor organization not currently certified as the exclusive representative of pertinent employees, has picketed and threatened to picket Shoreline South Intermediate Care, Inc., a wholly-owned subsidiary of Inland Pacific Health Care (Shoreline), or the home and/or office or the individual chiefly associated with its operations, in either case with the object forcing or requiring an employer to recognize and bargain with it as representative of such employees, or forcing or requiring such employees to accept or select Respondent as their collective-bargaining representative, and where such picketing has been conducted without a petition under Section 9(c) of the Act being filed within a reasonable time not exceeding 30 days from commencement of such picketing, and has thereby violated Section 8(b)(7)(C) of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of briefs filed by the parties, I make the following

FINDINGS OF FACT

I. JURISDICTION

Shoreline operates a nursing home in Alameda, California, annually deriving gross revenues in excess of $100,000 while purchasing and receiving goods or services valued in excess of $5000 which originate outside California. On these facts, and a stipulation between the parties to be the case, I find that Shoreline as a health care institution is an employer engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Basis of Analysis*

Respondent had a long collective-bargaining relationship with a predecessor to Shoreline. However, late in 1984 the present operators bought in and continued operations on a nonunion basis after hiring only a small fraction of the former work force. The takeover was effective after several weeks of flux during which inspections by the proposed purchaser occurred, a preliminary outline of the change was communicated to key administrative personnel, and an extensive program of interviewing applicants for the new, nonunionized staff took place. As to this hiring union members of the predecessor entity were expressly invited to apply for positions with the successor operation.

As these pretakeover activities unfolded Respondent made plans to commence a strike on or about the proposed effective date of 1 November 1984. In consequence of this picketing began around that time, however the newly constituted Shoreline operations continued providing patient care for those persons regularly in residence at the facility.

Respondent also filed the charges of unfair labor practice conduct within the meaning of Section 8(a)(1), (3), and (5) of the Act. Following hearing and decision by an administrative law judge the Board, on 30 September 1985, issued its Decision and Order adopting conclusions to the effect that Shoreline had not committed any of the alleged unfair labor practices. During the timespan of this proceeding the picketing had, with inconsequential exceptions, continued at the facility on a daily basis.

Originally, picketing was carried out by three to eight persons at the front business and visitor entrance, with some presence also at a rear employee entrance. Shouting and jeering occurred typically and patient's visitors were tendered a written bulletin alerting them to practices of care and seeking support for the rehire of former workers. For several months the picketing covered most of the day, but by summer 1985 it was shortened to the point of ending around noon.[1] The effects or picketing included interruption in receipt of pack-

[1] All dates hereafter are in 1985 unless indicated otherwise.

ages, the U.S. Postal Service and private mail delivery. Picket signs identified Respondent and carried legends reading ''On strike,'' ''Shoreline South unfair, ''Unity at work,'' ''Unfair labor practices'' and ''Call Jack Easterday.''

Inland Pacific Health Care, the parent entity and one of which Jack Easterday is chairman, has its place of business in Riverside, California. Operating from that location Inland Pacific owns and manages several other health care facilities. Easterday periodically visits Shoreline for a day of conferencing with its administrators and examination of general conditions by a physical tour. From this he had personal familiarity with the picketing that had been carried out.

On 21 October Respondent's business representative, Michael Smith, appeared at the Riverside office of Inland Pacific seeking Easterday, who was not present at the time. Hilen Turnbull, the billing clerk at Inland Pacific, testified that Smith handed her a business card plus union flyers, asked by name if Easterday's wife was in, and then departed saying that Easterday should talk with him or else experience pickets marching in front of both his business location and home. The flyer left at that time was another bulletin format of Respondent announcing a solidarity rally for 16 November at Shoreline, with a description of how various community groups had joined in a struggle to attain rehiring of all former employees and securing a recognition of the right to union representation from the Employer. The flyer added that should there be a refusal to meet with the collective delegation at the rally, there would be no choice but for the Union to take its case to Easterday's home in southern California.

Easterday returned to his office on 22 October where he learned of the materials left by Smith the previous day, plus an earlier handwritten letter to him from Smith seeking discussion of ''the dispute at Shoreline South.'' Smith again appeared at Inland Pacific on 22 October to leave another letter referring to the possible escalation of the situation, and asking that Easterday contact him at Respondent's Alameda office. Smith did not remain at the premises on this occasion long enough to make personal contact with Easterday, who promptly telephoned the Union in Alameda where he spoke with Sal Roselli, Respondent's regional supervisor. In this conversation Easterday expressed a willingness to meet, and in a telephone conversation with Smith the next day made an appointment for 1 November ln Alameda.

The 1 November meeting lasted over one-half hour during which Smith insisted on the rehiring of all former employees, and did not disclaim having approached Easterday's southern California home or deny that the Union was seeking bargaining recognition from the Employer. Easterday testified that he made surprising remarks at the conclusion of the meeting to the effect that the Union definitely wanted its former members rehired and that Shoreline's position was they could make application for such future vacancies as might occur and for which they would be considered.

On 31 October Respondent filed a representation petition covering approximately 60 included employees of the unit at Shoreline. The scheduled rally took place on 16 November with over 70 persons participating.[2] Smith and Roselli were both present and active in events of the rally. Legends on certain of the picket signs used in connection with the rally protested ''Mass firing'' and ''Union busting.'' Deline Davis, president of Inland Pacific, testified that she was present at Shoreline during the rally and heard portions of an amplified speech by Smith in which he stated an intention to negotiate with Easterday. Following this rally regular picketing did not resume until 25 November, however it has been continuous since then.

[2] On 12 November the U.S. District Court had issued a temporary injunction under Sec. 10(l) of the Act, in which Respondent was enjoined from recognitional picketing.

B. *Analysis*

On a preliminary issue of agency status it is evident that both Smith and Roselli are agents of Respondent at all material times. This also applies to Business Representative Charles Ridgell who testified at the earlier CA case hearing that he had been active in contract administration at Shoreline's predecessor and was closely involved in the Union deciding on strike action upon sale of the facility.

Section 2(13) of the Act provides that:

> In determining whether any person is acting as an ''agent'' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Responsibility attaches to Respondent if, applying the ''ordinary law of agency,'' it is shown that its officials were acting in the capacity of agents. Thus, the determinative factor in establishing agency status is not authorization or ratification of the agent's acts by the principal, but rather the nature of the agency. A principal is responsible for its agent's conduct if such action is done in furtherance of the principal's interest and is within the general scope of authority attributed to the agent, even if the principal did not authorize the particular act. In other words, it is enough if the principal empowered the agent to represent the principal within the general area in which the agent has acted.

All of the named individuals are in fact and appearance authoritative representatives of Respondent. Plainly these functionaries of a labor organization who operate from an established business office, disseminate written materials, identify themselves with the organization, and personally direct picketing activities are agents within the meaning of Section 2(13) of the Act. See *Bio-Medical of Puerto Rico*, 269 NLRB 827 (1984).

Regarding the primary issue of the case the General Counsel contends that Respondent's conduct has had a recognitional object from the beginning. Here the filing of a charge, alleging among other things an 8(a)(5) violation, coupled with public statements that it seeks a rehiring of members in such numbers as to reestablish majority status, is argued as realistically demonstrating a recognitional objective.

The Employer, as charging party, adopts these contentions and the support arguably found on the point in *Hotel, Motel, Restaurant Employees Local 737 (Jets Services)*, 231 NLRB 1049 (1977). See also *Construction & General Laborers Local 304 (Iacono Structural Engineers)*, 245 NLRB 346 (1979). The Employer notes further that even should some objects of the Union's picketing be permissible, a violation is present when not *all* objects are of that category. *Stage Employees Local 15 (Albatross Productions)*, 275 NLRB 744 (1985).

Respondent's contention is that all conduct prior to early October was devoid of a recognitional objective, and that only then did its representatives begin efforts to obtain such recognition. Respondent's brief emphasizes that only protest of claimed unfair labor practices is shown from pre-October conduct, and that this character is best shown by what was chiefly consumer impact and informational nature of the picketing.

I do not believe the General Counsel has established a prima facie case under Section 8(b)(7)(C). Recognitional objective signifies some plain approach or demand in which a labor organization seeks to attain or reattain status as a collective-bargaining representative of employees. It is insufficient to contend that protesting alleged unfair labor practices, even those prohibited under Section 8(a)(5) of the Act, would demonstrate such an objective, for without more this would eliminate a union's entitlement to so protect. On this point the *Jets Services* case is distinguishable because Respondent here has not undertaken any of the additional activities upon which the Board relied in that decision. In *Jets Services*, the successor employer had caused information to be given a union that its past practice in assuming government contracts as there involved was to hire 90 percent of the existing work force. The dissent in *Jets Services* pointed out this factor, emphasizing how this made it ''entirely appropriate'' for the Union to press as initially done for acceptance of its existing contract or negotiation of a new one. At footnote 9 of the majority opinion it is noted only that in considering that union's overall course of conduct this ''request to continue in effect the . . . collective-bargaining agreement'' was one factor. However, the context of this request, namely that highlighted by the dissenting opinion, was not commented upon by the majority thus clouding the question of whether its finding of ''merit in [the] contention that picketing, if successful in reestablishing an earlier majority, would thus have a recognitional objective by creating an employer obligation to recognize and bargain. Here Shoreline never gave such an assurance, and the picketing was keyed to rehiring former employees both as a tactical matter of labor relations pressure and in harmony with the unfair labor practice charges filed by Respondent in 1984.

What is shown instead is a protracted, persistent, aggravating, and inconvenient course of demonstrating which was but collateral to the Union's attempt at holding Shoreline as a successor employer in violation of the Act. When such a position could not be legitimately maintained following the Board's Decision and Order there were definite tactical changes that contrast vividly with the simple, dogged picketing of the nearly past 1 year. These changes included attempted and achieved personal contact with Easterday, plus expression of recognitional objectives for the first time in materials generated by Respondent. *Retail Clerks Union Local 1557 (Giant Foods of Chattanooga)*, 217 NLRB 4 (1975), also relied on by the General Counsel, turned in part on considering the significance of a union's claimed distinction between its ''reasonably immediate objectives'' and its ''long-range'' objectives.

The *Iacono* case relied on by the Charging Party is also distinguishable. Its highly differing context was that of a construction industry employer with widely dispersed jobsites, and one whose superintendent had several years before operative facts of the case signed a prehire agreement for the trade involved. In finding a violation of Section 8(b)(7)(C) in *Iacono* the Board treated as ''inseparable'' the protest of alleged unfair labor practices and that union's demand that the employer apply terms of its prehire agreement as that document represented ''culmination of the bargaining process [which] in turn, is based on recognition.'' *Iacono*, at 350. The Charging Party also relies on *Mine Workers Local 1329 (Alpine Construction)*, 276 NLRB 415 (1985). In my view this is unavailing for as in *Iacono* a union here inseparably coupled its interest in having former employees hired with the presentation of a proposed agreement to the employer, thus presenting a different ''total context'' as adopted by the Board. The *Stage Employees* case is also distinguishable for there the union agents repeatedly sought a contract from the employer, a fact the Board found in itself to ''make out a prima facie case that recognition was *an* object of the picketing.'' The Board termed this an ''increasingly powerful'' form of proposed economic sanction as the key indicator of that union's attempt at obtaining recognition.

Although here the Union did not offer proof of its reference to early October as when it learned of the Board's action, this would be an evident time for formal receipt of a Decision and Order dated 30 September. Thus Respondent was left without its principal basis to argue that only unfair labor practice protest was involved in its conduct, and the time limit of Section 8(b)(7)(C) commenced as of early October. This provision was met when on 31 October Respondent filed its representation petition. Under such a configuration of time, and absent adequate proof of a recognitional objective prior to early October, the allegations of the complaint are without support.

CONCLUSIONS OF LAW

1. Shoreline South Intermediate Care, Inc., a wholly-owned subsidiary of Inland Pacific Health Care, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has not committed the unfair labor practices alleged in this complaint.

[Recommended Order for dismissal omitted from publication.]